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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDUARDO RUBEN LOPEZ,

Defendant.

CRIMINAL INDICTMENT

Case No. 2:23-cr- *00-55-CDS-DJA*

VIOLATION:

Antitrust Conspiracy: Price Fixing
(15 U.S.C. § 1)

The Grand Jury charges that at all times relevant to this Indictment:

COUNT ONE**Conspiracy in Restraint of Trade
(15 U.S.C. § 1)****BACKGROUND**

1. Home health agencies (“HHAs”) are licensed, certified, or authorized by state and federal laws to provide health care services to patients in the home. HHAs employ registered nurses (“RNs”) and licensed practical nurses (“LPNs”) to provide home health care services. These services can include Private Duty Nursing (“private nursing” or “PDN”) services, which are nursing services for recipients who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility.

2. Each RN and LPN typically receives a set hourly rate from an HHA, and is usually paid every one or two weeks. On behalf of eligible patients, HHAs claim reimbursement from the Division of Health Care Financing & Policy (“DHCFP”), within the Nevada Department of Health and Human Services, which administers Medicaid in Nevada. Medicaid is a jointly funded federal and state program that provides health care insurance and medical assistance to people, including families and children, who meet income eligibility requirements. Claims for qualifying home health care services are reimbursed to the HHA based on predetermined rates set by the DHCFP in accordance with the Code of Federal Regulations (“CFR”), Title 42, Part 447, and in consultation with HHAs and a public hearings process.

3. Companies A through F were HHAs that competed with each other in the Las Vegas metropolitan area to attract, hire, and retain nurses to provide private nursing services. Nurses would choose which of these companies to work for based on factors such as wage rate, volume of patient referrals, and location of patients.

1 4. Company A was a corporation that provided private nursing services in
2 several states, including Nevada.

3 5. Company B was a limited liability company that provided private nursing
4 services in Nevada.

5 6. In or around July 2016, Company B was acquired by Company C. Company
6 C was a corporation that provided private nursing services in several states, including
7 Nevada.

8 7. In or around March 2017, Company C merged with another company to
9 form Company D. Company D was a corporation that provided private nursing services in
10 several states, including Nevada.

11 8. Company E was a limited liability company that provided private nursing
12 services in several states, including Nevada.

13 9. Company F was formed in or around August 2017 as a limited liability
14 company, and began providing private nursing services in Nevada in or around November
15 2018.

16 **DEFENDANT AND CO-CONSPIRATORS**

17 10. Defendant Eduardo Ruben LOPEZ was a resident of Las Vegas, Nevada.
18 From in or around March 2016 to in or around July 2016, LOPEZ was employed as
19 Director of Operations of Company B. After Company B was acquired by Company C,
20 LOPEZ was employed by Company C as the Executive Director of its Las Vegas office. In
21 or around January 2017, LOPEZ's employment with Company C ended. In or around
22 August 2017, LOPEZ founded Company F and was employed as its Vice President and
23 Administrator. At each of the companies LOPEZ worked for (Companies B, C, and F),
24 LOPEZ was responsible for recruitment, hiring, retention, and assignment of home health

1 care personnel, including nurses, to provide home health care services, including private
2 nursing services, to patients in or around the Las Vegas metropolitan area.

3 11. Individual 1 was a resident of Las Vegas, Nevada. Individual 1 was
4 employed by Company A as Director of Business Operations and was responsible for
5 managing the company's Las Vegas office's recruitment, hiring, retention, and assignment
6 of home health care personnel, including nurses, to provide private nursing services to
7 patients in or around the Las Vegas metropolitan area.

8 12. Individual 2 was a resident of Las Vegas, Nevada. Individual 2 was the
9 owner of Company B.

10 13. Individual 3 was a resident of Las Vegas, Nevada. Individual 3 was
11 employed by Company E.

12 14. Various corporations and individuals, not named as defendants in this
13 Indictment, participated as co-conspirators in the offense charged herein, and performed
14 acts and made statements in furtherance thereof.

15 15. Whenever in this Indictment reference is made to any act, deed, or
16 transaction of any corporation or limited liability company, the allegation means that the
17 corporation or limited liability company engaged in the act, deed, or transaction by or
18 through its officers, directors, agents, employees, or other representatives while they were
19 actively engaged in the management, direction, control, or transaction of its business or
20 affairs.

21 DESCRIPTION OF THE OFFENSE

22 16. Beginning on a date unknown, but no later than in or around March 2016 and
23 continuing up to and including in or around May 2019, the exact dates being unknown to
24 the Grand Jury, in the District of Nevada and elsewhere, LOPEZ and his co-conspirators,

1 known and unknown to the Grand Jury, knowingly entered into and engaged in a
 2 conspiracy to suppress and eliminate competition for the services of nurses employed by the
 3 co-conspirator companies by agreeing to fix the wages of those nurses.

4 17. The conspiracy engaged in by LOPEZ and his co-conspirators was a *per se*
 5 unlawful, and thus unreasonable, restraint of interstate trade and commerce in violation of
 6 Section 1 of the Sherman Act (15 U.S.C. § 1).

7 MEANS AND METHODS OF THE CONSPIRACY

8 18. For the purpose of forming and carrying out the charged combination and
 9 conspiracy, LOPEZ and his co-conspirators, among other things, did the following:

10 a. participated in meetings, conversations, and communications
 11 regarding Medicaid's proposed reimbursement rate increase and fixing the wage rates of
 12 RNs and LPNs within a range;

13 b. agreed during those meetings, conversations, and communications to
 14 fix the wage rates paid to RNs and LPNs within a range. For example:

15 i. On or about March 24, 2016, while employed as Company B's
 16 Director of Operations, LOPEZ texted Individual 2 (the owner of Company B), "I just had
 17 lunch with [Individual 3] and [Individual 1]. We are all in the same boat for staffing. Both
 18 [Individual 3] and [Individual 1] hired full time recruiters. **We all have a mutual agreement**
 19 **that with the pay increase, all 3 companies will stay within the same hourly rate.**"
 20 (emphasis added);

21 ii. On or about September 30, 2016, LOPEZ texted Individual 1
 22 (Company A's Director of Business Operations), "The new rate does allow us to hire more
 23 RN at competitive rates. I think we will offer 30-35 for RN." Individual 1 responded, "Ok.
 24

1 How about we offer 27-30?" LOPEZ replied, "Sounds like a deal. 30 max. LPN. 21-23. Is
2 our max." Individual 1 replied, "Same as us."

3 c. implemented fixed wage rates in accordance with the agreement
4 reached;

5 d. collected, exchanged, monitored, and discussed information on RN
6 and LPN wage rates for the purpose of monitoring and enforcing adherence to the
7 agreement reached. For example:

8 i. On or around August 17, 2018, after founding Company F,
9 LOPEZ texted Individual 1 (Company A's Director of Business Operations), "I am entering
10 the PDN world again in October. Just waiting on my Medicaid approval now. . . ."

11 Individual 1 replied, "Good for you. We just have to play nice with rates. . . ." In turn,
12 LOPEZ responded, "Yes. I'm staying with in our agreed rates;" and

13 ii. On or around November 28, 2018, Individual 1 texted LOPEZ,
14 "Hey Eddie, how much are you paying LPNs?" LOPEZ responded, "20-23. Which I think
15 is the same as everyone in town." Individual 1 replied, "Ok. A nurse just said she was
16 taking a job doing PDN at \$30 per hour! I was hoping it wasn't you." LOPEZ responded,
17 "Oh no. That's RN;" and

18 e. paid RNs and LPNs at collusive and noncompetitive wage rates.

19 TRADE AND COMMERCE

20 19. The business activities of LOPEZ and his co-conspirators were within the
21 flow of, and substantially affected, interstate trade and commerce. For example:

22 a. the reimbursement payments that Medicaid made to the co-conspirator
23 companies for the services rendered by their respective nurses were funded in substantial
24 part by the State of Nevada. The State of Nevada funding included a substantial portion of

1 federal funding from Medicaid, managed through the Centers for Medicare & Medicaid
2 Services ("CMS"). CMS is a federal agency based in Baltimore County, Maryland, and part
3 of the United States Department of Health and Human Services;

4 b. federal Medicaid funds administered by CMS and DHCFP traveled
5 into and out of Nevada to co-conspirator companies outside of Nevada to reimburse them
6 for the services rendered by their respective nurses;

7 c. the wage payments that the co-conspirator companies made to their
8 respective nurses traveled in interstate trade and commerce; and

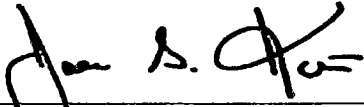
9 d. the co-conspirator companies employed health care workers, including
10 nurses, in multiple states.

11 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

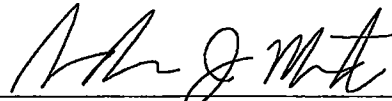
12 DATED this 15th day of March, 2023.

13 A TRUE BILL:

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17 /S/
FOREPERSON OF THE GRAND JURY
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